

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

SCHO0590

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Application Number

10/560,487

Filed

12-12-2005

First Named Inventor

Wolfgang ORGELDINGER

Art Unit

3781

Examiner

S. J. Castellano

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

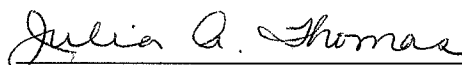
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attorney or agent of record.
Registration number 52,283

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Julia A. Thomas

Typed or printed name

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Telephone number

November 30, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor : Wolfgang ORGELDINGER
Serial No. : 10/560,487
Filed : December 12, 2005
Art Unit : 3781
Confirmation Number : 3136
Examiner : Stephen J. Castellano
Title : TRANSPORT CONTAINER SYSTEM FOR
GOODS, ESPECIALLY FOR FRUIT AND
VEGETABLES
Attorney Docket No. : SCHO0590

November 30, 2010

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Commissioner for Patents
P.O. Box 1450
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ATTACHMENTS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner:

The Final Office Action rejected Claims 12-14, 16, and 17, as follows:

(a) Claims 12 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Heymann *et al* ("Heymann") US 4527707 in view of Sluiter (2002/0033392.) (b) Claims 12-14, and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392.) (c) Claims 12-14, and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of

Sluiter (2002/0033392) and Heymann. **(d)** Claims 12, 14, and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392.) **(e)** Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Dutch (NL 9300986) in view of Sluiter (2002/0033392) and further in view of Sterett (US 5361906.)

As discussed below, all the rejections of all pending claims are based on clear errors in fact. Thus, the Office should reverse the rejections.

The obviousness rejections fail to consider a claim recitation and improperly correlates a claim recitation.

The Examiner fails to properly consider an express claim recitation, a lattice. And, even if the Examiner properly considers the claim recitation of a lattice, which he does not, he improperly correlates a lattice with objects being formed by a single hole.

In Applicant's opinion, the argument is quite simple, namely that the Examiner is not correct in his characterization of what a "lattice" is. As is noted in the Advisory Action, claim 12 states that "the lateral walls of the crate are structured to define a lattice". The term "lattice", in Applicant's opinion, has a well defined meaning, namely a framework or structure of cross strips of material, for example wood, metal or a plastic material. Applying this well-known understanding of the term "lattice" clearly defines the structure of the sidewall of the inventive crate and the specification refers with regard to Fig. 3a to the lateral sidewalls as being formed of a lattice. Thus, when considering the knowledge a person of ordinary skill has and confronting such a person with the term "lattice", s/he would recognize the meaning of this term and understand that a regular grid of crossing strips of material is provided by a lattice.

However, the Examiner argues that, in accordance with the specification and in Fig. 3a a **lattice is to be defined as being formed by a single hole** and that he had no choice other than to broadly interpret the term "lattice" to include a single hole.

In Applicant's opinion, the above is not at all a reasonable argument. Rather, it is readily apparent that neither of the art suggests providing a crate within a top extension which is attached to the lower part of the crate which has the lattice-structured sidewalls without providing additional fastening means. Rather the lattice structure itself is used which provides, as already outlined during the proceedings, for the improved and more efficient way of providing the top to the crate.

Thus, it is clear that the Examiner has committed **clear errors in fact** by considering a single hole in a wall to be a lattice.

For at least these reasons given above, the Examiner has committed clear errors in fact. Applicant respectfully requests reconsideration and reversal of the rejection of Claims 12-14, 16, and 17.

Respectfully submitted,



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